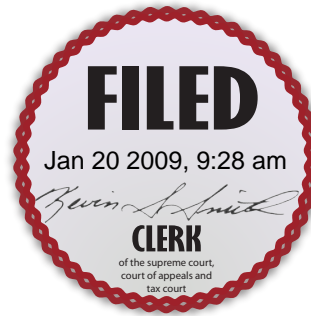


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

EVELYN HANSEN-DAVIS
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

A.A.R., Jr.,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 82A01-0809-JV-424
)	
STATE OF INDIANA,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause No. 82D01-0710-JD-442

January 20, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent A.A.R., Jr., appeals his adjudication as a juvenile delinquent for

having committed what would have been Burglary,¹ a class B felony, if committed by an adult. Specifically A.A.R., Jr., argues that the State failed to prove beyond a reasonable that he was a delinquent child for committing the charged offense. Finding no error, we affirm the judgment of the trial court.

FACTS

This is a companion case to A.A.R., Jr., v. State, No. 82A04-0804-JV-223, which we also hand down today. The facts of that case are relevant to the instant case. On October 13, 2007, A.A.R., Jr., shot at Kelly Casteel when Casteel attempted to prevent him and two other males from stealing a bicycle. A.A.R., Jr., was arrested and his fingerprints were taken and entered into an automated fingerprint system (“AFIS”), which contains a database of latent fingerprints already taken. AFIS identified a possible match with fingerprints that had been collected and recorded from a 2005 burglary, which still remained unsolved.

In March 2005, Michael Stevens and his family went on vacation, leaving their house and pets in the care of Michael’s sister, Tracy Stevens. On the last day of the Stevenses’ vacation, Tracy went to the house as she normally did each day. Upon entering the house, Tracy noticed that the inside door separating the first floor from the basement had been opened, which was unusual because the door was kept closed to keep the cats out of the basement. She immediately suspected that someone had been in the house and checked the outside doors before returning to her parents’ house.

When the Stevenses returned home, Tracy told them that she thought someone had

¹ Ind. Code § 35-43-2-1.

been inside the house. Upon entering their house, Michael and his wife discovered that a number of the children's toys were missing, including Playstation games and equipment, action figures, and a karaoke machine. In addition, the rooms did not look like they had when they left for their vacation. The Stevenses had given no one other than Tracy permission to be in the house, nor did they give anyone permission to take the missing items.

Officer James Myers of the Evansville Police Department was dispatched to the scene, where he dusted for fingerprints. Officer Myers found two sets of prints on a box containing toy action figures. The fingerprints were uploaded onto AFIS, but no possible matches were found until A.A.R., Jr.'s, fingerprints were taken in October, 2007 when he was arrested for shooting at Casteel. Toney Walker, a crime scene unit investigator, compared the possible match taken from A.A.R., Jr., with the fingerprints found at the Stevenses' residence and concluded that they were a match.

Although A.A.R., Jr.'s, fingerprints were found on the box inside the Stevenses' home, Tracy had never seen A.A.R., Jr., in the neighborhood before. In addition, Michael Stevens did not know A.A.R., Jr., before March 2005, nor had he been in the Stevenses' home before that time.

On October 25, 2007, the State filed a delinquency petition charging A.A.R., Jr., with Count I, attempted murder, a class A felony, and Count II, burglary, a class B felony.² At the

² The trial court held separate adjudications on each count and ordered separate appeals on each. Both counts are contained in the record from the same lower court cause number, but have been assigned separate appellate cause numbers pursuant to an Order from this court dated September 12, 2008, which severed the two counts for appeal purposes. Count I has been assigned appellate cause number 82A04-0804-JV-223.

adjudication, which commenced on January 22, 2008, A.A.R., Jr., moved for a directed verdict at the end of the State's case on the grounds that the State had failed to prove beyond a reasonable doubt that there was breaking or entering of the home by A.A.R., Jr. This motion was denied and A.A.R., Jr., was adjudicated a delinquent child for having committed an act that would have been burglary had it been committed by an adult. A dispositional hearing was held on February 8, 2008, and A.A.R., Jr., was made a ward of the Indiana Department of Correction. A.A.R., Jr., now appeals.

DISCUSSION AND DECISION

A.A.R., Jr., argues that the State failed to prove beyond a reasonable doubt that he was a juvenile delinquent for having committed the offense of burglary had it been committed by an adult. When reviewing a delinquency adjudication, appellate courts will consider only the evidence and reasonable inferences supporting the judgment. B.R. v. State, 823 N.E.2d 301, 306 (Ind. Ct. App. 2005). We will neither reweigh the evidence nor judge the witnesses' credibility. Id. If there is substantial evidence of probative value from which a reasonable trier of fact could conclude beyond a reasonable doubt that the juvenile committed the delinquent act, we will affirm the adjudication. Id.

When the State seeks to have a juvenile adjudicated as a delinquent for committing an act which would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. G.R. v. State, 893 N.E.2d 774, 776 (Ind. Ct. App. 2008). Indiana code section 35-43-2-1 provides:

A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony.

However, the offense is:

(1) a Class B felony if:

(A) it is committed while armed with a deadly weapon; or

(B) the building or structure is a:

(i) dwelling; or

(ii) structure used for religious worship.

A.A.R., Jr., asserts that the presence of his fingerprints is insufficient evidence to prove beyond a reasonable doubt that he broke into and entered the Stevenses' home. Notwithstanding this claim, our Supreme Court has held that a fingerprint found in a place where a crime is committed may be sufficient proof of identity. Johnson v. State, 512 N.E.2d 1109, 1110 (Ind. 1987). Furthermore, "[a] significant factor in determining the conclusiveness of a print is whether appellant had legitimate access to the fingerprinted object." Chambers v. State, 551 N.E.2d 1154, 1156 (Ind. Ct. App. 1990).

Here, A.A.R., Jr.'s, fingerprints were found inside the home on a box containing action figures like those which had been stolen. Moreover, Michael testified that no one had been given permission to enter his home and take the missing items. Tr. p. 44. This evidence establishes that A.A.R., Jr., did not have legitimate access to the box containing his fingerprints. Therefore, the fingerprints establishes A.A.R., Jr.'s, presence and entry into the home in which he had no permission to enter, and the trial court could reasonably conclude that he committed an act which would have been burglary if it had been committed by an adult.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.